

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

**SPENCER T. EASTING v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Hamilton County  
No. 257856 Douglas A. Meyer, Judge**

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**No. E2006-02795-CCA-R3-PC - Filed April 10, 2008**

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The petitioner, Spencer T. Easting, appeals the trial court's order dismissing his petition for post-conviction relief. The state has filed a motion requesting that this court affirm the trial court's denial of relief pursuant to Tennessee Court of Criminal Appeals Rule 20. The petitioner is barred by the statute of limitations and was properly dismissed. The state's motion is granted and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed  
Pursuant to Rule 20, Tenn. Ct. Crim. App. R.**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Spencer T. Easting, Chattanooga, Tennessee, Pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General, for the appellee, State of Tennessee.

**MEMORANDUM OPINION**

According to the petitioner, in September 2002 he was convicted pursuant to his pleas of guilty of aggravated burglary and theft of property. Upon these convictions, the trial court sentenced the petitioner to concurrent terms of four years and three years, respectively.<sup>1</sup> According to the trial court, on November 7, 2002, amended judgments were entered to reflect concurrent sentences of five years for the aggravated burglary conviction and three years for the theft conviction, with the sentences suspended and the petitioner released to intensive probation. No direct appeal was taken.

On February 6, 2006, the petitioner's probation was revoked and his sentences ordered into execution. On March 13, 2006, the petitioner filed a pro se petition for post-conviction relief. The petitioner claimed that (1) his conviction was based on an unlawfully induced and

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<sup>1</sup>The judgments are not included in the record on appeal.

involuntarily entered guilty plea; (2) the prosecutor withheld evidence favorable to the petitioner at trial; (3) he received ineffective assistance of counsel; (4) there was newly discovered evidence of his innocence in the form of a recanted statement by his co-defendant; and (5) the judgments, as amended, constituted a violation of the protections against double jeopardy. On March 29, 2006, the trial court dismissed the petition as time-barred. The trial court further found that the petition demonstrated no basis for tolling the one-year limitation period, particularly noting that the petitioner's claim of "newly discovered evidence" arose before his second sentencing hearing at which amended judgments were entered on the petitioner's own motion.

\_\_\_\_\_Tennessee Code Annotated Section 40-30-102(a) provides that a petition for post-conviction relief must be filed "within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final, or consideration of the petition shall be barred." As noted, the petitioner did not take a direct appeal of the judgments he now challenges. Accordingly, a timely petition was due within one year of December 7, 2002, the date the judgments became final. The trial court correctly found that the instant petition, filed in March 2006, was untimely.

Upon due consideration of the pleadings, the record, and the applicable law, the court concludes that the petition was properly dismissed. Accordingly, the state's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

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PRESIDING JUDGE JOSEPH M. TIPTON